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(Preparatory acts)

COURT OF AUDITORS

OPINION No 9/2012

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(2013/C 13/01)

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union (TEU), in particular Articles 4, 5 and 17, and the Treaty on the Functioning of the European Union (TFEU), in particular Articles 174 to 178, Article 287(4), second subparagraph, and Articles 317, 318 and 322 thereof;

Having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 ⁽¹⁾;

Having regard to the Parliament's request for an opinion, which reached the Court on 12 November 2012;

Having regard to the proposal for an amended Regulation presented by the Commission ⁽²⁾;

Having regard to its Opinion No 1/2010 'Improving the financial management of the European Union budget: Risks and challenges' ⁽³⁾ and its Opinion No 7/2011 on the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European

Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006 ⁽⁴⁾;

Whereas, pursuant to Article 5 TEU, the Union takes action in areas which do not fall within its exclusive competence only if and in so far as the objectives of the proposed action, by reason of the scale or effects, can be better achieved at Union level;

Whereas following Article 174 TFEU, in order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion;

Whereas the Commission shall execute the budget and manage programmes (Article 17(1) TEU), it shall implement the budget in cooperation with the Member States on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management and Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management (Article 317 TFEU),

⁽¹⁾ OJ L 298, 26.10.2012, p. 1.

⁽²⁾ COM(2012) 496 final of 11 September 2012.

⁽³⁾ <http://eca.europa.eu>

⁽⁴⁾ OJ C 47, 17.2.2012, p. 1.

HAS ADOPTED THE FOLLOWING OPINION:

INTRODUCTION

1. The Commission's amended proposal for a Regulation laying down common provisions on the ERDF, the ESF, the CF, the EAFRD and the EMFF and general provisions on cohesion policy funds deals essentially with the adoption of the Common Strategic Framework (CSF).

2. While this opinion is limited to the Commission's amended proposal, the Court would like to refer in general to its Opinion No 7/2011.

GENERAL OBSERVATIONS

3. The Commission's amended proposal modifies the scope of the CSF and splits its elements between a new annex (Annex I) to the Common Provisions Regulation and a Commission delegated act. This risks to add further complexity to the policy.

4. The Court observes that the aim of the CSF continues to be providing clear strategic direction to the programming process at the level of Member States and the regions (see recital 14 and Article 2(2) and Article 10 of the amended proposal). However, in contrast with the original Commission proposal, the CSF would not any longer translate the objectives of the Union into key actions for the Funds. Instead, the Legislator would delegate to the Commission the setting, for each thematic objective, of indicative actions of high European added value and corresponding principles for

delivery, and of priorities for cooperation (see Articles 11 and 12 of the amended proposal). In line with its previous Opinion (see paragraph 8 of Opinion No 7/2011), the Court considers that this represents in reality a key and decisive element of the future Cohesion scheme. As a result, it should be considered an essential element of EU legislation that, according to Article 290 TFEU, cannot be the subject of a delegation of power.

5. The Court would also like to recall its recommendation to articulate the concept of European added value in a suitable political declaration or in EU legislation in order to provide guidance to the EU's political authorities to be used when choosing expenditure priorities (see paragraph 18 of Opinion No 1/2010). The approval of the legal framework for the 2014-20 period provides a favourable opportunity for doing this. Such a clarification seems even more important if the intention to delegate to the Commission the identification of actions of high European added value is confirmed. In this respect the Court observes that the definition given by the amended proposal (see Article 2(4) of the amended proposal) is not sufficiently clear as to the underlying criteria which would permit the selection of actions making 'a significant contribution to the achievement of the targets and objectives of the Union strategy for smart, sustainable and inclusive growth and which shall act as a reference point in the preparation of programmes'.

6. Moreover, in line with the subsidiarity principle, all EU actions should be conceived with the objective of providing EU added value. The reference to an 'indicative' list of actions (Article 12 of the amended proposal) seems to suggest that the requirement to deliver EU added value is merely optional.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 13 December 2012.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA

President

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